

Exhibit 1

**A Records Abstraction Study of the Oxnard School District's *Coordination of Services/*
Student Success Team Procedures and Special Education Eligibility Assessment**

**Nadeen T. Ruiz, Ph.D.
School of Education
University of California at Davis**

Introduction

This document reports the results of a records abstraction study I conducted of the Oxnard School District's *Coordinated Services Team/Student Success Team* (CST/SST) procedures, and the relationship of these procedures to referral for special education eligibility assessment.

History and Rationale for *Coordinated Services Team/Student Success Team* and Other Response-to-Intervention Procedures

Amendments in the late 1990's through 2015 to the federal statute for special education, collectively known as the *Individuals with Disabilities Education Act* (IDEA), established stronger connections between special and general education than previous legislation:

Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by— (A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible... (USCODE, Statute Chapter 33, Section 1400).

In subsequent regulations and policy interpretations, the *Office of Special Education Programs* (OSEP), and its umbrella organization, *Office of Special Education and Rehabilitation Services* (OSERS), further deepened the connection between general and special education by promoting multi-tiered systems of support for students when they first show signs of underachievement in schools. These systems are widely known in policy, practice, and research as *Response to Intervention* (RTI or RtI²).

The Division of Special Education at the California Department of Education explained the benefits of RTI to California educators in their 2009 policy document, *Determining Specific Learning Disability Eligibility Using Response to Instruction and Intervention*:

The change in IDEA allows school districts to analyze how students respond to interventions as a foundational piece for assisting at-risk students in general education

settings before referrals for special education are made. All students who are having difficulty keeping up with the pace of curriculum demands can enjoy the benefits of RtI². Moreover, analyzing how students respond to instruction and interventions is an organizing principle for structures and programs that already exist in our schools. These existing programs utilize personnel in specialized ways; allocating these highly trained personnel into other areas maximizes resources effectively. The following positive outcomes have been documented in settings that have used RtI²:

- A decrease in overrepresentation of African Americans and other minority groups in special education
 - A positive school climate that promotes collegiality and shared problem solving
 - Increased teacher retention
 - The unification and consolidation of resources
 - Improved test scores
- (CDE, 2009, p. viii, emphasis added).

This same document contains further specifications of the Department's perspective on RTI in California:

In California, Response to Instruction and Intervention (RtI²) is a systematic, data-driven approach to instruction that benefits every student. California has expanded the notion of RtI² to communicate the full spectrum of instruction, from general core to supplemental or intensive, to meet the academic and behavioral needs of students. RtI² integrates resources from general education, categorical programs, and special education through a comprehensive system of core instruction and interventions to benefit every student. Of the many solution strategies that have been employed nationwide, the RtI² model is an approach that attempts to create the conditions necessary for closing the achievement gap. *RtI² focuses on the individual student and provides a vehicle to strengthen performance for struggling students before educational problems increase in intensity and special education seems the only viable option* (CDE, 2009, p. v, emphasis added).

In accordance with federal and state guidance, the Oxnard School District (OSD) offers a multi-tiered system of support within general education to students who are experiencing a range of challenges impacting their school performance. That system of support is known in OSD as *Coordinated Services Team/Student Success Team* (CST/SST), and is represented in the flow chart in Appendix A. (Details of the OSD CST/SST procedures are available from the OSD Pupil Services Office.) The essential characteristics of RTI, such as OSD's CST/SST, are: (a) evidence-based instruction; (b) progress monitoring; (c) screening for academic and behavior challenges; and, (d) increasing intensity of instruction through the tiers.

RTI's Promise in Preventing Misidentification and Disproportionality of Linguistically and Culturally Diverse Students for Special Education

To date, research continues to document the disproportionality of culturally and linguistically diverse children in special education (Connor, Gonzalez Cavendish & Jean-Pierre, 2019; Ford & Russo, 2017; Harry & Klingner, 2006). Though disproportionality of minorities in special education is widely known in the educational field, it is important to contemplate the real-life experiences of children when they are misidentified as learning and developmentally disabled. A special case in our own state of California, *Diana v. California State Board of Education*, helps us understand what that experience can entail. In this 1970 case, nine Latino students (Mexican American children) were found to have been misidentified as having an intellectual disability (educable mentally retarded, EMR). After the court's decision, as part of the state's monitoring process of numbers of Latino students in special education, a team of educators visited selected California districts showing minority overrepresentation in special education. Summarizing their findings, the authors wrote:

Overall, every district visited had examples of professional malpractice. How will the Chicano boy in district 1, who, after seven years in EMR programs, was found to be mentally gifted, as measured by his performance IQ score, recover what could have been in his two remaining years of high school? How will the Chicano boy in district 5, who in the 11th grade is found not to be EMR (in fact his adaptive behavior scores in 1975 made him ineligible for EMR placement), be compensated for the seven years of EMR placement? What of the child who, like several others, has been in EMR classes since the first grade (in District 3) and now in the 10th grade shows an accumulated academic growth of under three years? Why is there no record of her linguistic needs? How is it that Hispanic children, whose lives are at stake, receive such erratic and incompetent evaluations? (Figueroa, 1985).

Very recent research adds to the historical accounts and continues to document that special education diagnoses of intellectual disabilities impact student lives in ways that are not often brought to light. A study by Banks (2017) titled “These People are Never Going to Stop

Labeling Me': Educational Experiences of African American Male Students Labeled with Learning Disabilities," shows us that special education identification continues to carry weight.

Here two of the study's participants describe the impact of that weight:

Jackson: Even though my mother told me that having a disability wasn't a bad thing, and wasn't the end of the world, and didn't mean I was dumb, I still felt a little self-conscious about it. If someone would ask why I received extra time on an assignment, I couldn't explain why. (p. 102)

Edward: A lot of friends would crack jokes on me. [They would say], "How do you remember football plays, how do you know blocking assignments, how do remember certain things, but you struggle in class?" I never could answer, I didn't really understand that. (p. 103)

Given the impact on students' lives and families when a disability is diagnosed, it is no wonder that a recent publication of the *National Association of School Psychologists* reminds its readers of the promise of RTI in addressing disproportionality issues:

Most recently, the 2004 IDEA reauthorization required districts with "significant disproportionality" in identification, placement, or discipline to reserve 15% of their federal funding for early intervening services or professional development to support students without disabilities... Attention in practice and professional development shifted to state-level monitoring, cultivating culturally responsive educational systems and, eventually, to implementation of multitiered systems of support (MTSS) to reduce inappropriate identification and instruction (e.g., response to intervention; U.S. Government Accountability Office, 2013) (Sullivan & Proctor, 2016, p. 281; all references available from Sullivan & Proctor, 2016)

The authors of this article then point out the specific function of RTI:

As noted, the purpose of response to intervention (RTI) is to "eliminat[e] contextual factors influencing academic difficulties to find people with true disabilities" (Vaughn & Fuchs, 2003, p. 142), so it may help to alleviate cultural bias in identification of special needs (Proctor et al., 2012). Thus, understanding and ensuring students' access to and receipt of high quality instruction and intervention are critical. *MTSS, including RTI, hold the potential for improved data-based decision making or broadened focus on context and behavior rather than within-child deficits when students struggle in schools* (Sullivan & Proctor, 2016, p. 284; all references available from Sullivan & Proctor, 2016; emphasis added)

Issues in the Identification of Specific Learning Disabilities in English Learners

Many scholars have addressed the challenge of distinguishing between normal second language acquisition phenomena and indications of a learning disability (Klinger & Eppollito, 2014; Ruiz, 1988). Essentially, there is a well-established body of knowledge that documents how learning a second language impacts both assessment and instruction (Ruiz, 2013; Sánchez-López & Young, 2018). One example of the impact of second language acquisition on both testing and instruction is the widely replicated finding that English learners, as a group, take between 5 to 7 years to perform on achievement tests at an equivalent level as native English-Learners (Thomas & Colliers, 2004).

It is within this context of federal and state legislation and policies, in concert with educational research, that the present study took place in January/February 2020.

Record Abstraction Study of the Oxnard School District's RTI Procedures as Related to Special Education Eligibility Assessment

This section describes the study's methodology, data set, analysis, and findings.

Methodology

Following procedures put forth in recent research examining the special education records of culturally and linguistically diverse students (e.g., Hoover, Erikson, Patton, Sacco & Tran, 2018; Kraemer & Fabiano-Smith, 2017), I selected *records abstraction* as a method to study OSD's CST/SST procedures related to special education eligibility assessment. Records abstraction as a research methodology hails from the field of medicine wherein existing records are examined for a secondary use. Records abstraction is closely related to *document analysis* (Bowen, 2009), a research method that also has a history among special education studies examining educational services for diverse students (Figueroa & Newsome, 2006). For this study I collected 30 randomly-selected students' existing CST/SST files for the purpose of

answering the following overarching question: *Did the district's CCT/SST process constitute an obstacle to students' appropriate referral for special education eligibility assessment?*

Formation of the Data Set

In January 2020 I requested from the district a list of all OSD students currently within the RTI process. There were 546 students on the Excel list provided. I then used an electronic random sampling function to identify 30 students for this study. (I originally identified 40 students in the event that students in the first sample of 30 would not have viable files, but all 30 students had a workable file for records abstraction.) Each of the 546 student files had an equal chance to be selected for the study per random sampling procedures.

I then requested that the complete CST/SST file for each of the 30 students be redacted to remove any information that would identify the student. The names of all students, family members, educational personnel, and schools were removed before I viewed the files. Students' seven-digit ID numbers were left on the files in the event that I needed additional information from the district to complete my analysis. An example of a request for additional information was when I asked the district to confirm that the special education eligibility assessment alluded to in the file did, in fact, occur. For that request I needed to provide the district contact person with the student's ID number in order to retrieve the necessary information. For all other aspects of this study, however, I assigned each file a number from 1 to 30. Any allusion to a particular student in my report uses my numbering system alone.

Overview of the Data Set

Within the group of 30 randomly-selected students were 23 males, 6 females, and one student whose files did not use any pronouns to identify the student's gender. Twenty-four of the students were either officially designated as *English Learners* on CST/SST forms, or had

files that identified them as having a primary language other than English. Of the 24 English Learners, 23 were Spanish-speakers, with two of them also showing the additional primary language of Mixtec. One English Learner was identified as a Tagalog speaker. The remainder of the data set was comprised of six files from English-speaking students.

The randomly-selected group represented a range of grade levels in the 2019/20 academic year, with slightly greater numbers at the primary level (n=16 than the intermediate/middle grades (n=14): four kindergarteners, seven in Grade 1, one in Grade 2, four in Grade 3, three in Grade 4, four in Grade 5, five in Grade 6, and 2 in Grade 7.

Analysis

I abstracted information from each CST/SST file and posed the following questions:

1. Was the student referred for special education (or Section 504) assessment to determine eligibility?
2. How did the district respond to parents' and teachers' requests for special education/Section 504 eligibility assessment within the CST/SST files?
3. If the student was not referred for special education/Section 504 eligibility assessment, did the evidence suggest that the student reasonably continued in the CST/SST process?
4. If the student was not referred for special education/Section 504 eligibility, were there clear indicators (red flags) that the student should have been referred for special education/Section 504 eligibility assessment earlier in the CST/SST process?

Results

The findings from this study are grouped under the following subsections: (1) students referred for special education assessment eligibility through the CST/SST process; (2) parents'

requests for special education assessment eligibility; and, (3) students' on-going instruction and monitoring in the CST/SST process.

Students Referred for Special Education (SPED) Assessment Eligibility through the CST/SST Process

This section presents the results related to Question 1 with each file analysis: *Was the student referred for special education eligibility (or Section 504) assessment?* Of the 30 students randomly selected, a total of 11 were referred for assessment through the CST/SST process. Ten were referred for SPED assessment: Students #1, #2, #11, #13, #15, #18, #20, #25, #27, and #27. One student, #29, was referred for Section 504 assessment. I confirmed with district personnel whether the assessment plan procedures had gone forward when the file indicated that students had been referred. In 10 of those 11 cases, assessment procedures were enacted. In the 11th case, Student #27, a seventh grader, the parents refused to give permission for the district to assess him for SPED eligibility.

In 8 of the 10 cases of SPED assessment referral, the CST/SST team noted poor academic performance as a rationale for evaluation. Two other students, Students #15 and #20, were referred for speech/language issues, and the CST/SST recommended that assessment be carried out by a Speech, Language, and Hearing (SLH) specialist. The final student included in this group, Student #29, was found eligible for a 504 plan by the 504 assessment team on 12/4/19. (Section 504 of the Rehabilitation Act of 1973 is a federal law designed to protect the rights of individuals with disabilities in programs that receive federal funds. Students with 504 plans often receive reasonable accommodations in the general education classroom to learn the curriculum.)

Clearly, with regard to these 11 students, the district's CST/SST process was not an obstacle to assessment for SPED or 504 eligibility. Further, the district complied with Education Code (EDC, Section 56303) to first consider and use resources in the general education program.

Documentation of Parental/guardian Requests for SPED Assessment

Results of the analysis for Question 2— *How did the district respond to parents' and teachers' requests for special education/Section 504 eligibility assessment within the CST/SST files?*— show that four of the 30 files contained documentation that a parent/guardian had requested SPED eligibility assessment: Students #5, 10, 11, and 25. In each case there was a different outcome.

Student #5, currently a first-grader, had documentation in her file that her parents and physician had requested a special education assessment in the second half of her kindergarten year. In response to the request, OSD sent a *Prior Written Notice to Parent of Action Proposed or Refused by School District* (300.503- Code of Federal Regulations) on 5/10/2019 declining the request. The basic rationale for the district's decision, based on observations by a school psychologist occurring over several days, was that the child's behavior was developmentally appropriate for a 5 year 10 month old student. Per the letter, the district recommended monitoring by the SST, small group intervention in the classroom, and pull-out instruction by the Intervention Specialist, in lieu of SPED assessment. Interventions and monitoring were continued for Student #5 in grade one as documented on *Tier III Follow-up Student Success Team Meeting Summary* form dated 10/23/19. A follow-up SST meeting was scheduled for March 2020.

The parent of Student #10, a kindergarten boy, also requested that her child be tested for special education eligibility with a letter dated 8/27/19, at the onset of his kindergarten year. An

SST meeting took place soon afterwards on 9/5/19. A record of that meeting shows that all present, including the parent, agreed to take a range of actions instead of referral for SPED assessment. Those actions were: a referral for counseling by a community agency; monitoring of the child's academic progress; and a follow-up with the physician regarding hyperactivity concerns in order to rule out any medical conditions. The follow-up SST meeting took place on 12/17/19, mid-way through the child's first grade year, where his academic progress was documented, as well as the physician's diagnosis of an Oppositional Defiant Disorder (ODD) and Attention Deficit Hyperactivity Disorder (ADHD). The form also shows that the school psychologist and principal were scheduled to make a home visit in January 2020.

Though parents of Students #5 and 10 initially requested SPED assessment for their children who were 5 years old at the time, the students continued in the SST process. The SST process is a more intensive level of service than CST, by definition in OSD. Evidence in the students' files shows that through the SST process, OSD provided timely follow-up, graduated intensity of interventions/assessment, and, very importantly, continuous monitoring of the two students' academic performance and behavior, core characteristics of RTI per OSEP (Zirkel, no date).

In the third and fourth cases of parents' requests for SPED assessment for their children-- Students #11 and #25-- the evaluation was carried out for both students. However, on 2/21/19 assessment personnel for the district reported that Student #11, currently in Grade 3 and an English Learner (primary language, Spanish), did not qualify for special education services because neither a specific learning disability or other health impairment was found during the evaluation process. (The 22-page evaluation report by a bilingual school psychologist is available from OSD.) During the first half of the present 2019-20 academic year, there have

been two SST meetings for this student. The most recent documentation from 12/17/19 showed that the student has increased his reading skills since the beginning of the year. A follow-up meeting was scheduled for March 2020.

The parent of Student #25, an English Learner whose primary language is Spanish, requested SPED assessment on 11/12/19. I confirmed with the district that the assessment plan is moving forward.

In summary, OSD responded to all parent requests documented in the randomly-selected files in a timely and reasonable manner.

Students' On-going Instruction and Monitoring in the CST/SST Process

In this section I present findings on students who were on-going participants in the CST/SST process and were not referred for SPED assessment. The analysis for these students' files was guided by the following questions: *If the student was not referred for special education/Section 504 eligibility, did the evidence suggest that the student reasonably continued in the CST/SST process?* (Question 3), and *If the student was not referred for special education/Section 504 eligibility, were there clear indicators ("red flags") that the student should have been referred for special education/Section 504 eligibility assessment earlier in the CST/SST Process?* (Question 4). Nineteen of the 30 students whose files were selected for this analysis were receiving services through the CST/SST tiers of intervention and have not been referred for SPED assessment.

Kindergarten and Grade 1 Students in CST/SST. Ten out of the 19 students in this group were referred to the CST/SST process while in kindergarten or first grade: Student #4, Student #5 (who has a Prior Written Notice from the district declining to assess for SPED and whose case was described in the previous section), Student #6, Student #7, Student #8, Student #10

(whose parents and teachers decided against referral to SPED assessment), Student #16, Student #17, and Student #22, and Student #28. Children in kindergarten and first grade are at an early stage of literacy development. At this point in their development, home literacy practices significantly interact with the start of children's school literacy trajectory. For example, some children arrive at kindergarten having well-developed concepts about print, e.g., book-handling, awareness that the print (not only pictures) tells the story, concept of word, letter-sound associations, familiarity with various functions of print, etc. Those concepts are precursors to learning to read and write at the kindergarten/first grade levels. If children have not yet been exposed to literacy practices that are congruent with school instruction, it is critical that both formal instruction, and time for that instruction to have effect, occur before they are identified as having a specific learning disability. A multi-tiered system of support in general education, such as OSD's CST/SST process, provides an opportunity for very young children to receive instructional interventions and catch up with peers without being identified with what could be a spurious label of disability.

A subset of this K-1 group, Students #4, #10, #16, #17, and #22, had just begun participation in the CST/SST process in 2019/20 academic year, from late August to mid-November 2019. Clearly, these young students need time for instruction and monitoring of their academic progress, and are appropriately continuing in the CST/SST process. Furthermore, seven students from this group of K-1 students come with home languages other than English: five from Spanish-speaking families, one from Mixtec- and Spanish-language backgrounds, and one from Tagalog and English-language backgrounds. Again, the English Learner status of these students lends further substance to the appropriateness of them continuing in the CST/SST process while they are acquiring academic English and literacy.

Students Grades 2-7 in CST/SST. In addition to the K/1 students, there were nine additional students in the CST/SST process. Their results were analyzed in terms of the reasonableness (or not) of continuing in the multi-tiered process. One of these students, #3 (Grade 4), Spanish-speaking, entered the CST/SST process at the end of last academic year (6/18/19). It is appropriate that he be offered an opportunity to receive intervention tailored to his needs in general education through the CST/SST process and for the impact of the tailored intervention to be assessed. The SSTs for Student #3 has convened in this academic year to design instructional interventions, outcomes, and designate responsible personnel.

The analysis of files from the remaining group of eight students continuing to receive intervention and monitoring services show that they appropriately continued in the CST/SST process with no clear indicators (“red flags”) that any of the students should have been previously referred for SPED assessment. Four students-- #12, 23, 24, and 30-- have demonstrated fair to good progress in their expected outcomes from CST/SST, and continue to be regularly monitored for academic performance. Another student, #21, has only recently begun a program of intervention with the Intervention Specialist this academic year (10/19), and a follow-up meeting was scheduled for 1/28/20 to evaluate his progress.

Among the rest of this subset of files is one from an English Learner in grade 3, Student #9, whose home language is Spanish. At the beginning of this academic year, the student’s English proficiency was at the Emerging (beginning) level, in speaking reading and writing, with listening skills at the Expanding (intermediate) level. Previous to his initial SST meeting on 9/5/19, the student had made slow progress in reading and math skills. He began third grade with a grade equivalent score of 1.5 in reading and 2.1 in math. Despite the Student #9’s relatively limited academic progress since his original Tier I and II interventions during his

second grade year, his file documents that he has begun to receive additional reading interventions focused on reading since the beginning of this 2019/20 academic year. The follow-up SST meeting to assess Student #9's progress was scheduled for January 2020. Given this student's emergent English status, and continued, focused attention to his academic needs in general education, it is reasonable that he continue in the SST process. Like the other files discussed in this section, there are no clear indicators that he should have been referred for SPED assessment at the time of this study.

Another student in the group continuing in CST/SST is Student #19, a sixth grader with intermediate English proficiency. Student #19 entered the CST process at the beginning of his fifth grade year, 2018-19. With initial interventions, Student #19 showed very strong progress, e.g., in two and a half months, his language arts grade level score showed an increase of nearly an entire grade level. Such rapid progress is not typical of a child with SLD. Later in his fifth grade year, however, Student #19 was moved to the more intensive phase of intervention, SST, because CST/SST members felt that his behavior was detracting from his academic progress. An SST follow-up meeting was held in November of the present academic year, 11/12/2019, providing documentation that Student #19 had made good progress in reading, but less growth in math, or in independently asking for help when needed. In response, the team intensified the instructional support for this student with the following goals: meet twice weekly after school with the math/science instructor for tutoring, and receive counseling services to assist him with self-awareness and self-advocacy. In short, given the record of Student #19's progress in language arts since entering the CST/SST process, and intensification of instruction for the areas of concern— math and self-advocacy— it is appropriate that he continue in the CST/SST process.

The final student among this group, Student #14, in grade 6 with a home language of Spanish, made very good progress in the original areas of concern—behavior and spelling—and has exited the CST/SST process in 12/2019. He now receives all instruction along with his peers.

Summary and Conclusion

This records abstraction study of 30 randomly-selected CST/SST files was designed to answer the over-arching question: *Did the district's CCT/SST process constitute an obstacle to students' appropriate referral for special education eligibility assessment?* Analysis of the data did not reveal evidence of obstacles to SPED assessment eligibility. Eleven of the 30 files documented that students were SPED or Section 504 assessed during the CST/SST process. For the remaining 19 student files, evidence reasonably suggested that 18 students appropriately continued in CST/SST. The final student from among the 19 students participating in CST/SST exited the process due to documented progress with educators' original concerns. Since midway through the academic year 2019/20, he has been able to receive all instruction in his classroom with peers.



Nadeen T. Ruiz
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